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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

ISABEL H.,

Petitioner;

v.

THE SUPERIOR COURT OF ORANGE
COUNTY,

Respondent;

ORANGE COUNTY SOCIAL SERVICES
AGENCY et al.,

Real Parties in Interest.

G042870

(Super. Ct. No. DP-010914)

O P I N I O N

Original proceedings; petition for a writ of mandate to challenge an order of the Superior Court of Orange County, Caryl Lee, Judge. Petition denied.

Deborah A. Kwast, Public Defender, Frank Ospino, Assistant Public Defender, Stacy Kelly and Paul DeQuattro, Deputy Public Defenders, for Petitioner.

No appearance for Respondent.

Nicholas S. Chrisos, County Counsel, Karen L. Christensen and Aurelio Torre, Deputy County Counsel, for Real Party in Interest.

Law Office of Herold LaFlamme and Linda M. O'Neil for Minor.

* * *

Isabel H. (mother) petitions for a writ of mandate in the dependency case of her daughter. Mother claims the juvenile court abused its discretion and violated her right to due process of law when it denied her counsel's request for a continuance under Welfare and Institutions Code section 352, subdivision (a),¹ to secure mother's appearance at a contested 12-month review hearing (§ 366.21, subd. (f)). We deny the petition. The court was within its discretion in denying the continuance based on the absence of good cause.

FACTS

The current dependency proceedings were initiated on September 2, 2008, when mother was involuntarily hospitalized under section 5150.² The dependency petition alleged mother was unable to provide regular care for the child because of mental illness. The court declared daughter to be a dependent of the court on October 20, 2008.

Throughout the dependency, mother exhibited an inability to attend appointments associated with the dependency case and her reunification services. Her referral for parent education services was terminated "due to [having] three no shows."

¹ All statutory references are to the Welfare and Institutions Code.

² A previous dependency case terminated on February 28, 2007, with the return of daughter to mother.

Mother did not come to numerous scheduled visits with daughter. Mother attributed her absences to forgetfulness, her work schedule, health problems, and personal difficulties. In July 2009, mother was not present at a meeting to discuss daughter's placement options; mother claimed she forgot the meeting. Mother failed to attend regularly her mental health appointments.

On September 17, 2009, mother filed a written promise to appear on October 27 for the contested 12-month review hearing. For reasons not specified in the record or the parties' briefs, mother did not appear in court as promised. Mother's counsel orally requested a continuance: "On behalf of the mother, I would be making a request for continuance on the matter. The mother is not here today and I do know that she is objecting to the termination of her services. And I would like a brief continuance in order to secure her presence or attempt to secure her presence."

Counsel for the Orange County Social Services Agency (SSA) objected to this request for lack of good cause. Counsel for daughter commented: "And if there were some assurance we knew she was going to be here, certainly that would be another matter, but we don't know that a continuance would effectuate her presence."

The court, agreeing with counsel for SSA and daughter, denied the request: "Unfortunately, that appears to be the case. I do think that if mom had a slight chance of being here then I would not have a problem, but at this point she was ordered back, she has notice, and there just isn't good reason, there isn't good cause. She has missed many parenting classes and there are so many concerns that are voiced in the addendum of today that the court can simply not continue the matter."

The court proceeded to the merits of the 12-month review. The court ordered reunification services terminated and set the matter for a section 366.26 hearing on February 24, 2010.

DISCUSSION

Mother contends the court erred by denying the request for a brief continuance to arrange for mother to attend the 12-month review. According to mother, the court impermissibly considered the merits of mother's position at the 12-month review in denying the continuance. Mother also asserts the court violated her due process rights by denying the continuance. Other than challenging the alleged procedural error of refusing a continuance, mother does not challenge the court's substantive order terminating reunification services and scheduling a section 366.26 hearing.

"Upon request of counsel for the parent . . . the court may continue any hearing under this chapter . . . provided that no continuance shall be granted that is contrary to the interest of the minor. . . . [¶] Continuances shall be granted only upon a showing of good cause and only for that period of time shown to be necessary by the evidence presented at the hearing on the motion for the continuance. . . . [¶] In order to obtain a motion for a continuance of the hearing, written notice shall be filed at least two court days prior to the date set for hearing, together with affidavits or declarations detailing specific facts showing that a continuance is necessary, unless the court for good cause entertains an oral motion for continuance." (§ 352, subd. (a).)

"The court's denial of a request for a continuance will not be overturned on appeal absent an abuse of discretion." (*In re Elijah V.* (2005) 127 Cal.App.4th 576, 585.) The court was well within its discretion when it denied mother's request for a continuance. Mother's counsel offered no justification for mother's absence from the hearing. Moreover, counsel offered no factual basis for a belief counsel could compel mother to appear at a future date had the continuance been granted. The court did not improperly conflate the merits of the 12-month review with the continuance request. Instead, the court considered evidence available to it in determining whether good cause existed in the record for granting the continuance.

Relying on *David B. v. Superior Court* (2006) 140 Cal.App.4th 772, mother contends the refusal of the court to continue the hearing represents a violation of her due process rights. In *David B.*, the court held that a parent of a dependent child has a “due process right to a contested review hearing, unfettered by the prerequisite of a juvenile court’s demand for an offer of proof.” (*Id.* at p. 775.)

Here, mother was provided with clear notice of the date on which a contested 12-month review hearing would occur. The court did not require mother to make an offer of proof to obtain this hearing. Mother promised in writing to appear on that date; she did not fulfill her promise. There is no due process violation when a parent has notice of the proceeding and a fair opportunity to be heard. (See *Ingrid E. v. Superior Court* (1999) 75 Cal.App.4th 751, 756-758.)

DISPOSITION

Mother’s petition for a writ of mandate is denied.

IKOLA, J.

WE CONCUR:

SILLS, P. J.

FYBEL, J.